

## **IEERB Handbook to CBA Compliance**

The Indiana Education Employment Relations Board is a neutral agency that oversees labor relations between public school teachers and the schools they serve. Starting in 2015, IEERB will review CBAs for compliance.

Indiana Code (“I.C.”) Article 20-29 establishes the framework for teacher collective bargaining in Indiana, which is supplemented by IEERB’s administrative rules, 560 Indiana Administrative Code (“I.A.C.”) 2. IEERB staff has developed this Guide to provide additional guidance and tips on CBA compliance.

The following Guide is for GUIDANCE ONLY on CBA compliance under I.C. Ch. 20-29 and 560 I.A.C. 2. IEERB is a neutral agency and cannot provide legal advice; nor does this Guide bind IEERB or its Board in any way. This Guide is not intended to take the place of careful review of I.C. Article 20-29 and 560 I.A.C. 2 or as a substitute for legal advice. Some of this Guide may not be relevant to a school employer or exclusive representative based on the ratification date of a current collective bargaining agreement. This Guide may not reflect the most recent agency or court decisions.

This Guide supersedes prior IEERB guidance on CBA compliance. IEERB may, from time to time, issue updates. Please check IEERB’s website at [www.in.gov/ieerb](http://www.in.gov/ieerb) for applicable law and rules, the current bargaining timelines, and additional guidance. You also can register for free IEERB updates through the IEERB Bulletin

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## Overview

Generally, parties must bargain if part or all of their CBA is expired or will expire prior to the next bargaining season. For specific questions on whether parties should be bargaining, see IEERB's Practitioner's Guide to Bargaining and Impasse. IEERB encourages the parties to carefully review any tentative agreements in their entirety prior to ratification and submission to ensure compliance. IEERB is not able to provide legal advice on CBA content or compliance. For more information on particular provisions that the IEERB Board has evaluated, see IEERB's website. For legal advice, contact your local counsel.

Once the parties have reduced their agreements to writing, the CBA must be ratified by the governing body of the school employer and the exclusive representative. **Once it is ratified, a CBA must be uploaded to Gateway at <https://gateway.ifionline.org> and posted online by the school employer.**<sup>1</sup> The exclusive representative may email the ratified CBA to IEERB at [ratifiedcontract@ieerb.in.gov](mailto:ratifiedcontract@ieerb.in.gov). The CBA posted online must be identical to the one sent to IEERB and must include a compensation plan and all side agreements or MOUs regarding subjects of bargaining. IEERB may return CBAs if they are not signed, lack a valid term, or are incomplete (e.g., attachments or agreements referred to in the CBA are not actually attached).

IEERB will appoint a compliance officer to review all teacher CBAs and issue a Compliance Report and Recommendation. The Report will be completed by March 30 of the year in which the CBA expires, and will include proposed penalties for any noncompliance. Parties may appeal this initial review to the Board.

## CBA Substance

IEERB has an approved rubric that will be used in CBA compliance, which is posted on IEERB's website. An annotated rubric is provided in the Appendix. Additionally, although there is no required CBA format, a recommended/sample CBA is provided in the Appendix.

### I. General

CBAs must include agreed-upon mandatory subjects of bargaining. The mandatory subjects of bargaining listed in I.C. § 20-29-6-4 are salary, wages, and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under I.C. § 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the compensation plan adopted under I.C. § 20-28-9-1.5, but do not include the teacher evaluation procedures and

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<sup>1</sup> See I.C. § 20-29-6-6.1(a), 560 I.A.C. 2-5-1 (parties must submit ratified contracts to IEERB); I.C. § 20-29-6-19 (providing that not later than 14 business days after the parties have reached an agreement under this chapter, the school employer shall post the contract upon which the parties have agreed on the school employer's Internet web site).

criteria, any components of the teacher evaluation plan, rubric, or tool, or any performance stipend or addition to base salary based on a performance stipend to an individual teacher under I.C. § 20-43-10-3.

Indiana Code §§ 20-29-6-4.5 and 20-29-6-4.7 provide that the following are impermissible subjects of bargaining:

- school calendar;
- teacher dismissal procedures and criteria;
- restructuring options;
- the school's ability to work with educational entities regarding postsecondary or dual credits;
- teacher evaluation procedures and criteria;
- any subject not required to be bargained; and
- a matter that another statute specifies is not subject to collective bargaining, including master's supplemental payments pursuant to I.C. § 20-28-9-1.5 and any performance stipend or addition to base salary based on a performance stipend to an individual teacher under I.C. § 20-43-10-3.

Language necessary for the formation of a collective bargaining agreement includes a ratification section, the CBA term, a recognition clause, and definitions. Additionally, a grievance procedure may be included in a collective bargaining agreement.<sup>2</sup> Pursuant to I.C. § 20-29-6-2, the following cannot be in a CBA:

- impermissible subjects of bargaining (as set forth in I.C. § 20-29-6-4.5(a)),
- provisions that conflict with any right or benefit established by federal or state law,
- provisions that conflict with school employee rights in I.C. § 20-29-4-1 and I.C. § 20-29-4-2,
- provisions that conflict with school employer rights set forth in I.C. § 20-29-4-3, restructuring options, and
- a school's ability to work with educational entities regarding postsecondary or dual credits.

## II. Salary and Other Direct Compensation

### A. Compensation Plans

I.C. § 20-28-9-1.5 provides that salary increases or increments must be based upon a combination of the following factors:<sup>3</sup>

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<sup>2</sup>A school employer and an exclusive representative are prohibited from mutually agreeing to binding arbitration concerning teacher dismissals. *See* I.C. § 20-28-7.5-7.

<sup>3</sup> Parties have flexibility in definitions; however, the parties cannot define some factors to incorporate education and experience such that the 33% threshold is violated (e.g., leadership cannot be defined as education if the two factors together would exceed 33%).

1. Education and experience. Specifically, a combination of
  - a. the attainment of either: additional content area degrees beyond the requirements for employment; or additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under I.C. Art. 20-29; and
  - b. the number of years of a teacher's experience
 taken together may account for not more than 33% of the calculation used to determine a teacher's increase or increment.<sup>4</sup>
2. Evaluation. Specifically, the results of an evaluation conducted under I.C. Ch. 20-28-11.5.
3. Leadership. Specifically, the assignment of instructional leadership roles, including the responsibility of conducting evaluations under I.C. Ch. 20-28-11.5.
4. Student needs. Specifically, the academic needs of students.

If the parties have agreed to no increases, parties do not need to submit a compensation plan. A compensation plan may be included, but will not be reviewed for compliance. A statement indicating that no increases are to be given must be included in the CBA.

There is no specific format for compensation plans.<sup>5</sup> A teacher rated ineffective or improvement necessary under I.C. Ch. 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of the teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the factors listed above. Moreover, compensation plans that provide teachers extra or "catch up" compensation for prior ineffective/needs improvement ratings are not allowed. CBAs also should indicate how newly hired teachers will be compensated.

The statute requires that compensation plans redistribute money for increases that otherwise would have been given to teachers rated ineffective or needs improvement. Compensation plans that include a pot of money, either defined (e.g., \$300,000) or a calculation (80% of new money into the general fund), provide for redistribution and therefore do not need a redistribution provision. Compensation plans that provide for set amounts per teacher, factor, or point (e.g., each effective evaluation gets \$100 or \$100 per point) must have a provision that provides for a redistribution of the money that would have gone to teachers rated ineffective or needs improvement (i.e., school employers must budget for all teachers to be

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<sup>4</sup> The calculation is not based on what individual teachers actually get, but what they could get. For example, a compensation plan that provides for 25% for education and experience, 50% for leadership, and 25% for evaluation is permissible even though a teacher does not get the leadership money (thereby making 50% of individual increase based on education and experience and 50% on evaluation). However, a compensation plan that provides that all eligible teachers get a 2% raise based on education and experience and evaluation is not permissible.

<sup>5</sup> See *Carmel Clay Schs.*, F-12-01-3060 at 4 (IEERB Bd. 2013); *Jay Sch. Corp.*, F-13-01-3945 at 14-18 (IEERB Bd. 2013), *on appeal on other grounds*, Cause No. 49A05-1412-PL-00586.

rated effective or highly effective). An example of the provision: Any money that would have been given to teachers who were rated ineffective or needs improvement will be equally distributed amongst all teachers receiving an effective or highly effective evaluation rating.

Finally, compensation plans must include a salary range. A salary range is the lowest and highest base salaries for full-time bargaining unit members not including any increases for that year. The salary range contains only the base salary for direct teaching functions – it does not include payments for ancillary, co-curricular, or extra-curricular duties or activities. The CBA may, but is not required to, include additional ranges, such as ranges for individual unit members or categories of unit members, and/or include some increases for the year.

DOE's model compensation plan is in the Appendix. Additionally, compensation plans are available for review through Gateway at [https://gateway.ifionline.org/report\\_builder](https://gateway.ifionline.org/report_builder) or IEERB Search at: <https://ieerbsearch.ieerb.in.gov/login.aspx>. **Please note that IEERB's posting signifies neither the CBA's compliance with applicable laws and rules, nor IEERB's endorsement of the CBA.** IEERB strongly recommends that compensation plans be carefully reviewed to ensure they are compliant, complete, and understandable prior to ratification and submission. For more information, see I.C. § 20-28-9-1.5.

Transition year contracts are the first year of a contract under the 2011 changes to collective bargaining. Although recommended, parties to a transition year contract do not have to include a compensation plan or follow the compensation plan restrictions. However, parties who have previously used an evaluation plan compliant with I.C. Ch. 20-28-11.5 may not provide increases for teachers rated ineffective or needs improvement on the most recent evaluation. A statement explaining that the parties are in a transition year must be included in the CBA to take advantage of the flexibility of the transition year. Compliance officers will review the parties' bargaining history to ensure the parties are in a transition year.

## B. Other Increases for Normal Teaching Duties

In general, all teacher increases for normal teaching duties must go through the compensation plan. However, there are some notable exceptions. Although education can be part of the compensation plan (as allowed under I.C. § 20-28-9-1.5(b) and capped at 33%), school employers also may provide a supplemental payment to a teacher in excess of the salary specified in the school corporation's compensation plan if the teacher has earned a master's degree from an accredited postsecondary education institution in a content area directly related to the subject matter of: (1) a dual credit course; or (2) another course; taught by a teacher. In addition, a supplemental payment may be made to an elementary school teacher who earns a master's degree in math or reading and literacy. This supplement is not subject to collective bargaining. This supplement may be in the CBA if there is an accompanying statement that the payment was not bargained.<sup>6</sup>

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<sup>6</sup> See I.C. § 20-28-9-1.5(a).

Another exception involves performance awards pursuant to I.C. § 20-43-10-3(g).<sup>7</sup> The performance grant received by a school employer pursuant to I.C. § 20-43-10-3 shall be allocated among and used only to pay cash stipends to all teachers who are rated as effective or as highly effective and employed by the school as of December 1. The lead school corporation or interlocal cooperative administering a cooperative or other special education program or administering a career and technical education program, including programs managed under I.C. Ch. 20-26-10, I.C. Ch. 20-35-5, I.C. Art. 20-37, or I.C. Ch. 36-1-7, shall award performance stipends to and carry out the other responsibilities of an employing school corporation under this section for the teachers in the special education program or career and technical education program.

The amount of distribution from an annual performance grant to an individual teacher is determined at the discretion of the governing body of the school employer. The governing body shall differentiate between the amount of the stipend awarded to teachers rated effective and highly effective. The school employer shall complete the appropriation process for all stipends from a performance grant to individual teachers before December 31 of the state fiscal year in which the performance grant is distributed to the school corporation and distribute all stipends from a performance grants to individual teachers before the immediately following January 31. Any part of the performance grant not distributed as stipends to teachers before February must be returned to the department on the earlier of the date set by the department or June of that state fiscal year. This stipend is not bargained. This supplement may be in the CBA if there is an accompanying statement that the payment was not bargained.

Finally, in addition to the stipend, an amount determined under the policies adopted by the governing body but not exceeding 50% of the amount of the stipend to an individual teacher in a particular state fiscal year becomes a permanent part of and increases the base salary of the teacher receiving the stipend for school years beginning after the state fiscal year in which the stipend is receivable. These increases are payable from funds other than the performance grant and are not bargained. These increases may be in the CBA if there is an accompanying statement that the increases were not bargained.

#### C. Payment for Ancillary Duties

Parties may bargain compensation for ancillary duties or those duties performed by a teacher outside of normal teaching duties.<sup>8</sup> Payment for these duties may be in the form of an hourly wage or a stipend.

#### D. Payment for Co-curricular & Extra-curricular Duties

The parties must bargain compensation for co-curricular and extra-curricular duties performed by the teacher. Payment for these duties may be in the form of an

<sup>7</sup> For more information on performance grants, please contact DOE.

<sup>8</sup> See *Indiana Education Employment Relations Bd. v. Nettle Creek Classroom Teachers Assoc.*, 26 N.E.3d 47, 56 (Ind. App. Ct. 2015); see also *Jay Sch. Corp.*, F-13-01-3945 at 21-22 (IEERB Bd. 2013), on appeal, Cause No. 49A05-1412-PL-00586.

hourly wage or a stipend.

### III. Salary/Wage Related Fringe Benefits

A salary and wage related fringe benefit is defined as a benefit, other than direct salary or compensation, received by the school employee from the school employer, including, but not limited to, accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under I.C. § 20-28-9-11. Examples aside from those listed in the statute include unpaid leave, wellness plans, Section 125 plans, travel allowance, and severance pay.

### IV. Other Permissible Contract Items

The parties may include the following items in their CBA:

- Grievance procedure (may contain binding arbitration only within scope of bargaining)
- Definitions
- Contract interpretation provisions (Examples of common contract interpretation clauses include: supremacy clause, savings clause, severability clause and scope of agreement)
- Non-subject provisions that are not impermissible.

### V. Memorandum of Understanding (MOU)

Parties bargain in the fall and must incorporate all agreed-upon subjects of bargaining into a CBA. Sometimes, however, the parties ratify an agreement subsequent to a ratified CBA that changes or modifies the CBA. These subsequent agreements are called memoranda of understanding or MOU. MOUs are considered part of the CBA, and therefore must be submitted to IEERB.

As the parties may not formally bargain until August 1, an MOU outside the bargaining timeline is generally impermissible. However, IEERB may find an MOU permissible in the following circumstances:

- (1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA.
- (2) Non-rule policy guidance issued by the Board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.

The compliance review of an MOU is described below.

### **Compliance Process**

IEERB's emergency rules governing the compliance review process become effective August 1, 2015. These rules are explained below. See IEERB's website for the rules.



## I. Initial Review

Within two business days of ratification by both parties, the school employer shall submit a copy of the ratified CBA to the Board in the manner prescribed by the Board. The Board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the CBA.

CBAs are reviewed for compliance based on IEERB's rubric, which is posted online. The compliance officer may contact the school employer, the exclusive representative, or both to clarify or request additional information about the CBA or an MOU. Upon completion of the review of a CBA, the compliance officer shall prepare a written Compliance Report and Recommendation ("Report").<sup>9</sup>

The Report (or Addendum) will identify and describe any and all noncompliant items; and recommend the penalty for such noncompliance that may include one or more of the following:

- Ordering the parties to cease and desist from all identified areas of noncompliance.
- Requiring the parties to obtain written approval from the Board or Board's agent prior to ratifying any subsequent CBA or MOU.
- Requiring any other action deemed appropriate by the compliance officer as authorized by state law.

The Board or its agent will provide the parties with a copy of the compliance officer's Report or Addendum via email to each party's contact information on file with the Board.

## II. MOU Review

Any MOU not timely submitted constitutes a failure to submit a complete CBA and may result in a finding of noncompliance with a penalty of requiring Board approval prior to ratifying any subsequent CBA or MOU. Moreover, any MOU ratified by the parties outside the bargaining timelines, except to the extent permitted based on findings listed below, is noncompliant. Within two business days of ratification of the MOU by both parties, the school employer must submit a copy of the ratified MOU and a written explanation of the need for the MOU to the Board in the manner prescribed by the Board. As mentioned above, the following may constitute an exception to a finding of noncompliance for bargaining outside the allowable bargaining timelines:

- Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. The compliance officer will determine if an MOU is compliant under this exception on a case-by-case basis.
- Non-rule policy guidance issued by the Board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines. This guidance will be posted on

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<sup>9</sup> Upon completion of the review of an MOU, the compliance officer shall prepare a written Addendum to the original Report.

IEERB's website. Please contact IEERB if you are aware of circumstances that may warrant the issuance of such guidance.

Upon receipt of a ratified MOU, and to the extent practicable, the Board chair shall appoint the original compliance officer to review the MOU. The compliance officer shall review the MOU and accompanying documentation to determine if an exception to a finding of noncompliance is warranted. The compliance officer will issue an Addendum to the Report regarding the MOU.

### III. Appeals

Parties have 15 days from the date the Report or Addendum is issued to appeal:

- a finding of noncompliance;
- a recommended penalty; or
- both a finding of noncompliance and a recommended penalty.

The appeal must be in writing, state the basis of the appeal with reasonable particularity, and be filed with the Board in the manner prescribed by the Board. Upon the timely filing of an appeal, the Board will review the appeal and issue a final order. As part of its review, the Board may decide the appeal without briefs or oral argument, receive briefs from the parties, hear oral argument, or both receive briefs and hear oral argument. The Board may stay impasse proceedings pending the Board's final order in an appeal.

The Board shall issue a final order within 30 days of the later of the timely filing of an appeal, receipt of the last brief from the parties, or conclusion of oral argument. In the event no timely appeal is filed, the compliance officer's Report or Addendum shall become the final order of the Board.

### IV. Prior Approval Procedure

If the final order of the Board requires the parties to obtain written approval from the Board or Board's agent prior to ratifying any subsequent CBA or MOU, the Board chair shall appoint a staff member or ad hoc panel member to serve as the compliance officer to review the tentatively agreed upon CBA or MOU. The written appointment shall be made no later than August 1 and provided to both the school employer and the exclusive representative. The school employer shall submit a copy of the tentatively agreed upon CBA or MOU to the compliance officer in the manner prescribed by the Board. The compliance officer shall review the CBA or MOU and provide the parties with a written notice of approval or denial.

If the compliance officer issues a denial of approval to ratify, the notice shall identify the terms of the CBA or MOU that preclude the compliance officer's approval. Absent a timely appeal and as soon as practicable, the parties shall correct the noncompliant terms and submit a new tentatively agreed upon CBA or MOU to the compliance officer for review. Parties have two business days from the date the notice of denial is emailed to appeal the compliance officer's decision.

The appeal must be in writing and describe, with reasonable particularity, the reason the identified terms of the CBA or MOU should be approved. Upon the timely filing of an appeal, the Board shall make a determination and issue a final notice of approval or denial no later than 30 days after receipt of the appeal. The Board or its agent may stay impasse proceeding pending the Board's final order in an appeal. Failure to obtain approval to ratify a CBA subjects the parties to impasse procedures pursuant to I.C. § 20-29-6-13 unless impasse is otherwise stayed by the Board or the Board's agent. Any ratification of a subsequent CBA or MOU without the written approval of the Board or the Board's agent as required, shall be considered null and void, and the parties will proceed through impasse proceedings pursuant to I.C. § 20-29-6-13 as applicable.<sup>10</sup>

### **Conclusion**

IEERB is responsible for reviewing and identifying items in a CBA that are not compliant with current requirements. That means it is more important than ever for parties to ensure their CBA is compliant. Failure to comply will result in the issuance of a penalty. Some important reminders:

- The parties must send all CBAs and MOUs to IEERB within set timelines.
- An IEERB compliance officer will review CBAs and MOUs for compliance and issue a Compliance Report and Recommendation or Addendum.
- The parties will be able to appeal to the IEERB Board.
- Use the resources provided at [www.in.gov/ieerb](http://www.in.gov/ieerb)!

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<sup>10</sup> Indiana Code Art. 4-21.5 does not apply to compliance reviews.

## Compliance Glossary

**Bargaining Unit** – A group of school employees that the employer has recognized, or IEERB has certified, as appropriate to be represented by an employee organization for the purpose of collective bargaining. *See* I.C. § 20-29-5-1; 560 I.A.C. 2-2-1.

**Collective Bargaining (mandatory subjects of)** – Salary; wages; and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under I.C. § 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the salary scale adopted under I.C. § 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool. *See* I.C. § 20-29-6-4.

**Collective Bargaining Agreement (CBA)** – Any and all agreements between the school employer and exclusive representative on any aspect of the bargaining relationship, including, but not limited to, the mandatory subjects of bargaining, a grievance procedure, a compensation plan, and any memorandum of understanding ratified subsequent to the collective bargaining agreement. A CBA may not extend past the end of a state budget biennium. Once a CBA has been ratified, it must be sent to IEERB and posted on the school employer's website. *See* I.C. Ch. 20-29-6; 560 I.A.C. 2-5-1.

**Compensation Plan** – The local plan under which salary increases or increments will be determined pursuant to I.C. § 20-28-9-1.5(b).

**Compliance Officer** – The staff member or ad hoc panel member appointed by the Board pursuant to I.C. § 20-29-6-6.1(b) to review a collective bargaining agreement and make a written recommendation regarding the collective bargaining agreement's compliance with I.C. Art. 20-29, including any penalty for noncompliance.

**Exclusive Representative** – The school employee organization that has been certified by IEERB, or voluntarily recognized by the school employer, to be the exclusive representative of the school employees in the appropriate bargaining unit, or persons authorized to act on the organization's behalf. *See* I.C. § 20-29-2-9.

**Memorandum of Understanding (MOU)** – Any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified collective bargaining agreement, that changes or modifies the collective bargaining agreement.

**Ratification** – Formal approval by the governing body of the school employer and the exclusive representative of a tentative agreement, generally a newly negotiated collective bargaining agreement. Agreements reached through collective bargaining under I.C. Art. 20-29 are binding as a contract only if ratified by the governing body of the school employer and the exclusive representative. *See* I.C. § 20-29-6-6.

**Salary and wage related fringe benefit** – A benefit, other than direct salary or compensation, received by a school employee from a school employer, including but not limited to health insurance, retirement plans, and paid time off.

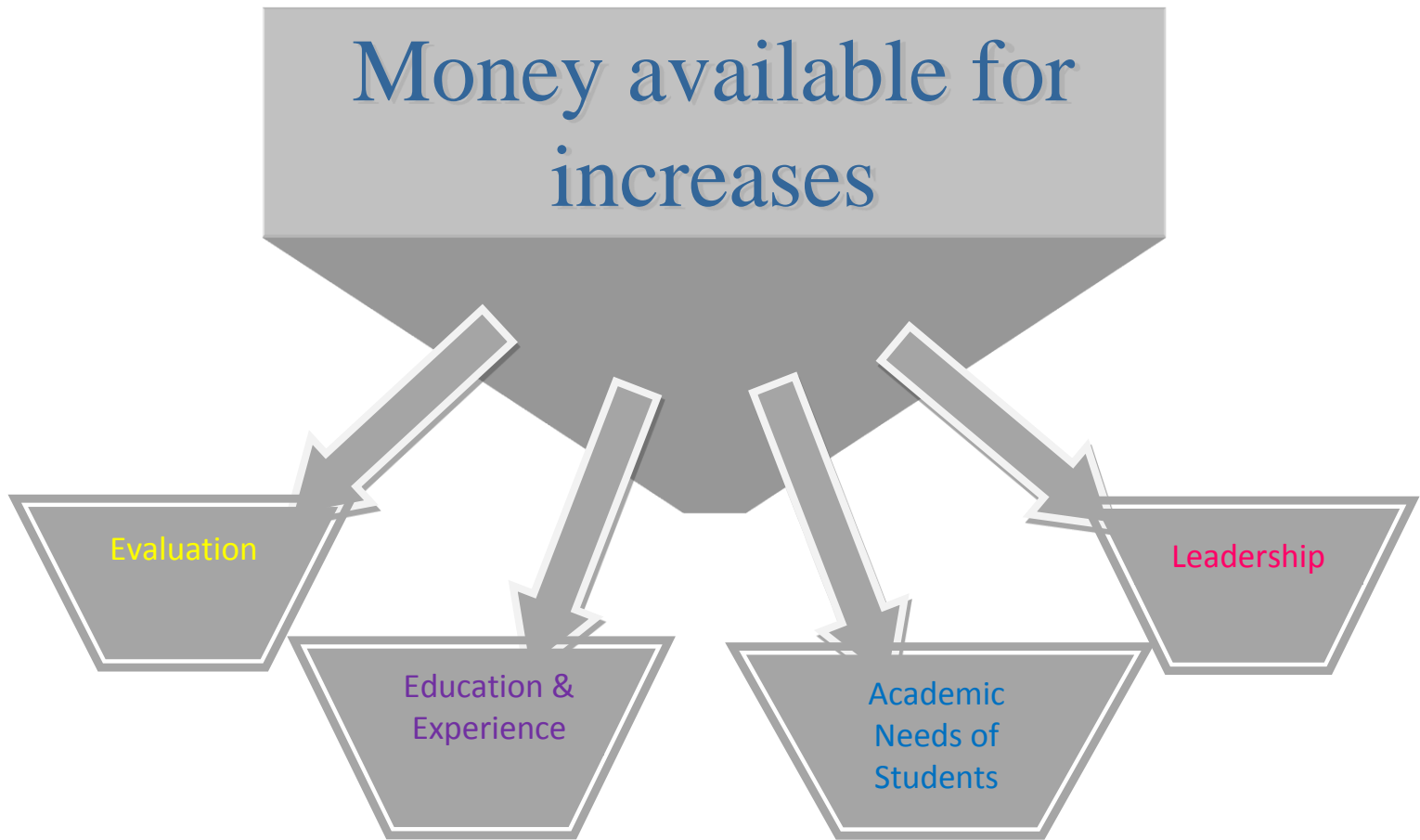
**Salary range** – The lowest and highest base salaries for full-time bargaining unit members not including any increases for that year. A salary range must be included as part of a compensation plan. The salary range contains only the base salary for direct teaching functions – it does not include payments for ancillary, co-curricular, or extra-curricular duties or activities. *See* I.C. § 20-29-6-6.1.

**School Employer** – The governing body of a school corporation or charter school established under I.C. Art. 20-24, and a person or persons authorized to act for the governing body of the school employer in dealing with its employees. Governing body is defined as a board of school commissioners; a metropolitan board of education; a board of trustees; any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or the body that administers a charter school established under I.C. Art. 20-24. *See* I.C. §§ 20-29-2-10, 20-29-2-15.

**Scope (of bargaining)** – The range of issues made bargainable by I.C. Ch. 20-29-6.

**Term (of a CBA)** – The dates a collective bargaining agreement is in effect. Collective bargaining agreements may not extend past the end of a state budget biennium, which occurs on June 30 of odd-numbered years (e.g., June 30, 2015). *See* I.C. § 20-29-6-4.7(b).

## DOE Model Compensation Plan



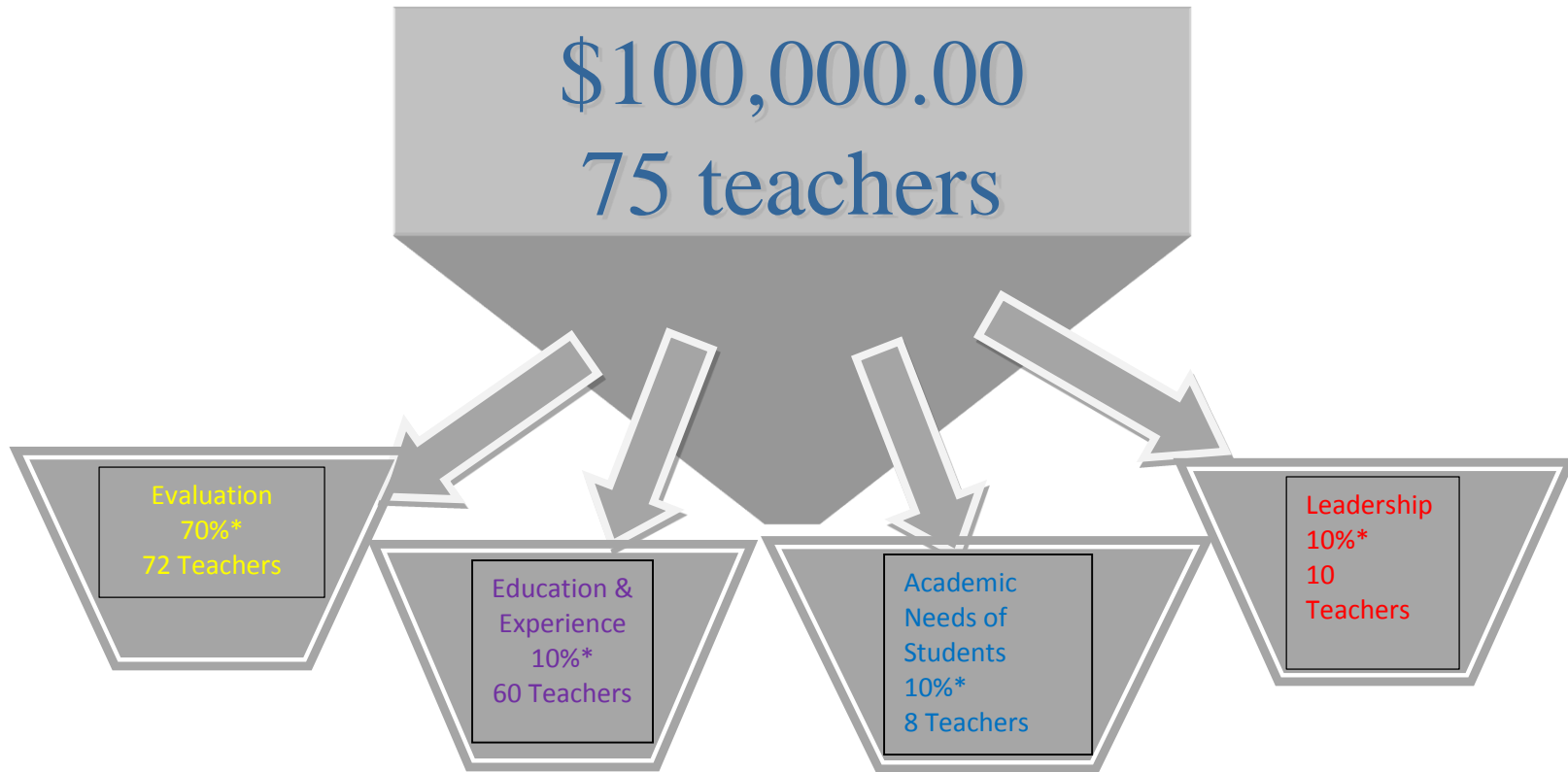
**All compensation plans must use at least two of the four factors.**

**Teachers rated Needs Improvement and Ineffective are not eligible for salary increases.**

### Directions

- Step One: Determine the amount of money available for increases.
- Step Two: Determine the factors used in the compensation plan.
- Step Three: Define each factor.
- Step Four: Determine the percent value of each factor and if it is an increase to the base, stipend, or combination.
- Step Five: Determine the amount of money available in each bucket.
- Step Six: Divide the number of qualified teachers in each bucket by the amount of money available in the bucket.
- Step Seven: Determine the salary range including increases.

## DOE Model Compensation Plan - Example



Step One: \$100,000.00

Step Two: Evaluation, Education & Experience, Academic Needs, & Leadership

Step Three: Evaluation = highly effective and effective evaluations

Education & Experience = return for one additional year of service

Academic Needs of Students = teach dual credit course

Leadership = Chair School Improvement Committee

Step Four: \*Percent value noted above. Evaluation added to base, Education & Experience, Academic Needs, and Leadership given as a stipend.

Step Five: Evaluation \$70,000.00, Education & Experience \$10,000.00, Academic Needs \$10,000.00, Leadership \$10,000.00

Step Six: Evaluation = \$972.22/teacher, Education & Experience = \$166.67/teacher, Academic Needs = \$1,250.00/teacher, Leadership = \$1,000.00

Step Seven: Salary range \$40,000.00-\$80,000.00 + increases

### **Annotated Teacher CBA Compliance Rubric**

What is this?

- IEERB staff has developed this annotated rubric to help the parties understand more about the compliance process.

Who is this for?

- All stakeholders, as well as compliance officers.

How to use?

- We suggest that you take a proposed CBA and go through this annotated rubric to ensure compliance prior to settling and ratifying a CBA.

What is the scope of review?

- The review is based on the CBA and any MOUs provided to IEERB by the parties.
- This review does not include (1) an evaluation of deficit financing; (2) an evaluation of whether the health insurance plan is compliant with IC Ch. 20-26-17 (HEA 1260-2011); (3) an evaluation of compliance with IC § 20-28-9-11; or (4) an exhaustive review of whether any provision of the CBA conflicts with any state or federal right, benefit, or law.

Can IEERB provide an informal review of my proposed CBA?

- We understand that this is a new process and that there are many questions, which is why we have created both this annotated rubric and the accompanying Handbook. Unfortunately, time and staffing restraints will not allow IEERB to provide an informal review of a proposed CBA.

Are there other resources on compliance?

- All resources found at [www.in.gov/ieerb](http://www.in.gov/ieerb)
  - IEERB Handbook on CBA Compliance
  - IC Ch. 20-29-6
  - 560 I.A.C. 2 (Emergency rules)
  - Model compensation plan



	OVERVIEW	EXPLANATIONS/EXAMPLES	INCLUDED?	IF INCLUDED, COMPLIANT?
<b>REQUIRED PROVISIONS</b>			If no, automatically not compliant	
Parties	School employer	<ul style="list-style-type: none"> <li>For example, IEERB School Corporation</li> </ul>		
	Exclusive Representative	<ul style="list-style-type: none"> <li>For example, IEERB Teachers' Organization</li> </ul>		
	Composition of the bargaining unit (positions included/excluded)	<ul style="list-style-type: none"> <li>The bargaining unit composition is generally found under the contract provision entitled "Recognition Clause."</li> <li>The bargaining unit composition generally entails a clause stating that the unit is all school employees minus the excluded positions (e.g., all certificated employees except for the superintendent, chief academic officer, principals, etc.).</li> <li>The provision must be the same as the prior year unless a change has been approved by IEERB. The Compliance Officer will use the prior CBA submitted to IEERB to determine whether any changes have occurred.</li> <li>Practitioner's Tip: Changes to the bargaining unit, such as unit amendment or clarification, must go through the notice process and be sent to IEERB. For more information, see I.C. Ch. 20-29-5 and 560 I.A.C. 2-2.</li> </ul>		
CBA term	Not past state budget biennium	State budget biennium falls on June 30 of odd-numbered years.		

Ratification section	Signed by agent of each party on or after August 1.	<ul style="list-style-type: none"> <li>Not every member of the bargaining team or the board must sign, just one agent.</li> <li>Practitioner's Tip: Have CBA signed at the time of ratification. Unsigned CBAs will be returned or found to be non-compliant.</li> </ul>		
<b>REQUIRED SUBJECTS</b>			If no, automatically not compliant	
Salary	Salary range, including the starting amount/calculation for salaries	<ul style="list-style-type: none"> <li>Salary ranges include the lowest and highest base salaries for full-time bargaining unit members, not including any increases for that year. The salary range contains only the base salary for direct teaching functions – it does not include payments for ancillary, co-curricular, or extra-curricular duties or activities.</li> <li>Examples: (a) \$35,000 - \$80,000; (b) \$30,000 (with \$5,000 that can be added at superintendent's discretion) - \$80,000</li> <li>The CBA may, but is not required to, include additional ranges, such as ranges for individual unit members or categories of unit members, and/or include some increases for the year.</li> </ul>		
	Compensation plan (unless statement providing that no increases or in transition year)	<ul style="list-style-type: none"> <li>A compensation plan is the local plan under which salary increases or increments will be determined pursuant to I.C. § 20-28-9-1.5(b).</li> <li>Practitioner's Tip: Across the board raises do not comprise a compliant compensation plan.</li> <li>If the parties have agreed to no increases, parties do not need to submit a compensation plan. A compensation</li> </ul>		

		<p>plan may be included, but will not be reviewed for compliance. A statement indicating that no increases are to be given must be included in the CBA.</p> <ul style="list-style-type: none"> <li>• Transition year contracts are the first year of a contract under the 2011 changes to collective bargaining. Although recommended, parties to a transition year contract do not have to include a compensation plan or follow the compensation plan restrictions. However, parties who have previously used an evaluation plan compliant with I.C. Ch. 20-28-11.5 may not provide increases for teacher rated ineffective or needs improvement on the most recent evaluation. A statement explaining that the parties are in a transition year must be included to take advantage of the flexibility of the transition year. Compliance officers will review the parties' bargaining history to ensure the parties are in a transition year.</li> </ul>		
	Compensation plan clearly defines eligibility	<ul style="list-style-type: none"> <li>• Teachers who received ineffective or needs improvement ratings on the most recent evaluation may not receive an increase.</li> <li>• All other eligibility criteria should be listed (e.g., not newly hired teachers).</li> <li>• Practitioner's Note: Teachers may not receive any increases for the year after they receive an ineffective/needs improvement rating. Therefore, compensation plans that provide teachers extra or "catch up" compensation for prior ineffective/needs improvement ratings are not allowed.</li> </ul>		
	Compensation plan uses 2-4 statutory factors (evaluation,	<ul style="list-style-type: none"> <li>• Parties may not use factors not listed (e.g., attendance).</li> </ul>		

	education and experience, leadership, academic needs)	<ul style="list-style-type: none"> <li>Parties must use at least two of the listed factors. Remember that education and experience together comprise one factor.</li> </ul>		
	Education and experience does not exceed more than 33% of increase calculation	<ul style="list-style-type: none"> <li>The calculation is not based on what individual teachers actually get, but what they could get. For example, a compensation plan that provides for 25% for education and experience, 50% for leadership, and 25% for evaluation is permissible even though a teacher does not get the leadership money (thereby making 50% of individual increase based on education and experience and 50% on evaluation). However, a compensation plan that provides that all eligible teachers get a 2% raise based on education and experience and evaluation is not permissible.</li> <li>33 1/3% exceeds 33% (no rounding).</li> </ul>		
	Compensation plan includes definitions of the factors	<ul style="list-style-type: none"> <li>Parties have flexibility in definitions; however, the parties cannot define some factors to incorporate education and experience such that the 33% threshold is violated (e.g., leadership or academic needs cannot be defined as experience or education if the two factors together would exceed 33%).</li> </ul>		
	Compensation plan either includes a defined amount, or calculation of, increases or provides for redistribution of increases for those	<ul style="list-style-type: none"> <li>The statute requires that compensation plans redistribute money for increases that otherwise would have been given to teachers rated ineffective or needs improvement.</li> <li>Compensation plans that include a pot of money, either defined (e.g., \$300,000) or a calculation (80% of new money into the general fund), provide for redistribution and therefore do not need a redistribution provision.</li> </ul>		

	rated ineffective or needs improvement	<ul style="list-style-type: none"> <li>• Compensations plans that provide for set amounts per teacher, factor, or point (e.g., each effective evaluation gets \$100 or \$100 per point) must have a provision that provides for a redistribution of the money that would have gone to teachers rated ineffective or needs improvement (i.e., school employers must budget for all teachers to be rated effective or highly effective). An example of the provision: Any money that would have been given to teachers who were rated ineffective or needs improvement will be equally distributed amongst all teachers receiving an effective or highly effective evaluation rating.</li> <li>• Explain whether increases in form of stipend or base.</li> </ul>		
	Other permissible salary items (e.g., wage payment agreements, salary for supplemental contracts, dues deductions, payment for extended contracts, general payroll deductions)  (not required)	<ul style="list-style-type: none"> <li>• Wage payment agreements are agreements pursuant to I.C. § 20-26-5-32.2 between the parties regarding the frequency of salary payments where the frequency will be different than that required under the Indiana wage payment laws.</li> <li>• Supplemental service contracts are often for summer school.</li> <li>• Extended contracts are often for the non-teaching employees in the bargaining unit to work days in excess of the teaching work days.</li> <li>• Performance awards, and increases relating to those awards, pursuant to I.C. § 20-43-10-3 may not be bargained, and therefore it is recommended that they not be included in the CBA. If included in the CBA, there must be a corresponding statement providing that the payments were not bargained, or it will be considered noncompliant.</li> </ul>		

		<ul style="list-style-type: none"> <li>• Payments for master's degrees pursuant to I.C. § 20-28-9-1.5(a) may not be bargained, and therefore it is recommended that they not be included in the CBA. If included in the CBA, there must be a corresponding statement providing that the payments were not bargained, or it will be considered noncompliant.</li> </ul>		
Wages	Payment for ancillary, co-curricular, and extra-curricular duties/activities	<ul style="list-style-type: none"> <li>• Example: Head boys' basketball coach receives \$5,000 stipend.</li> <li>• Wage payments may be in the form of a set amount per activity or duty, or an hourly wage.</li> </ul>		
Salary and wage related fringe benefits	Salary and wage related fringe benefits	<ul style="list-style-type: none"> <li>• Examples aside from those listed in the statute include unpaid leave, wellness plans, Section 125 plans, travel allowance, and severance pay.</li> <li>• Practitioner's Note: Salary and wage related fringe benefits are defined as a benefit, other than direct salary or compensation, received by the school employee from the school employer, including, but not limited to, accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under I.C. § 20-28-9-11.</li> </ul>		
<b>PERMISSIBLE PROVISIONS</b>				
	Grievance procedure (may contain binding arbitration only within scope of bargaining)	<ul style="list-style-type: none"> <li>• Binding arbitration involves a decision made by a third party that is binding on both parties.</li> </ul>		

	Definitions	<ul style="list-style-type: none"> <li>For example: “Days” as used in this contract shall mean calendar days unless otherwise specified.</li> <li>Other commonly defined terms include board, school corporation, superintendent, agreement, school year, and association/federation.</li> </ul>		
	Contract interpretation provisions	<ul style="list-style-type: none"> <li>Examples of common contract interpretation clauses include: <ul style="list-style-type: none"> <li>supremacy clause</li> <li>savings clause</li> <li>severability clause</li> <li>scope of agreement</li> </ul> </li> </ul>		
	Non-subject provisions that are not impermissible	<ul style="list-style-type: none"> <li>Common examples include provisions on teacher rights.</li> <li>Practitioner’s Note: Teacher rights provisions cannot conflict with school employer rights, such as rights set forth in I.C. § 20-29-4-2.</li> </ul>		
<b>IMPERMISSIBLE ITEMS</b>			If yes, not compliant.	
	MOUs outside bargaining timeline not pursuant to a Board order or permitted by the Compliance Officer	<ul style="list-style-type: none"> <li>An MOU is any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified collective bargaining agreement, that changes or modifies the collective bargaining agreement.</li> <li>Any MOU ratified by the parties outside the bargaining timelines, except to the extent permitted by the exceptions below, is noncompliant.</li> </ul>		

		<ul style="list-style-type: none"> <li>The following may constitute an exception to a finding of noncompliance for bargaining outside the allowable bargaining timelines:               <ul style="list-style-type: none"> <li>(1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. This exception will be decided on a case-by-case basis by the compliance officer.</li> <li>(2) Non-rule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.</li> </ul> </li> </ul>		
	Any subject other than salary, wages, or salary and wage related fringe benefits	<ul style="list-style-type: none"> <li>Statutory examples of impermissible subjects:               <ul style="list-style-type: none"> <li>Curriculum development and revisions</li> <li>Selection of curricular materials</li> <li>Teaching methods</li> <li>Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees</li> <li>Student discipline</li> <li>Expulsion or supervision of students</li> <li>Pupil/teacher ratio</li> <li>Class size or budget appropriations</li> <li>Safety issues for student and employees in the workplace</li> <li>Hours</li> <li>Performance grants pursuant to I.C. § 20-43-10-3</li> <li>Individual performance stipends to teachers pursuant to I.C. § 20-43-10-3</li> <li>Additions to base salary based on performance stipends pursuant to I.C. § 20-43-10-3</li> </ul> </li> </ul>		



	Provisions that conflict with any right or benefit established by federal or state law			
	Provisions that conflict with school employee rights as set forth in I.C. §§ 20-29-4-1, 20-29-4-2			
	Provisions that conflict with school employer rights set forth in I.C. § 20-29-4-3			
	Provisions that conflict with restructuring options available as described in I.C. § 20-29-6-2(a)(4)			
	Provisions that conflict with the school employer's ability to work with an education entity as provided in I.C. § 20-29-6-2(a)(5)			
	Other (detail must be provided)			

## **Recommended CBA Format**

### Article I – Introduction

- A. Parties
- B. Recognition Clause/Composition of Bargaining Unit
- C. Definitions
- D. Contract Interpretation Provisions (optional)
- E. Permissible Non-subject Provisions (optional)

### Article II – Salary/Wages

- A. Compensation Plan
  - 1. Salary Range
  - 2. Compensation Plan
- B. Other Permissible Salary Items (optional)
- C. Ancillary Duty Pay (optional)
- D. Co-Curricular and Extra-Curricular Activity Pay Schedule

### Article III - Wage/Salary-Related Fringe Benefits

- A. Leaves
- B. Insurance
- C. Retirement Benefits
- D. Other Permissible Wage/Salary Related Fringe Benefits

### Article IV - Grievance Procedure (optional)

### Article V - CBA Term & Ratification Section

## APPENDIX